

200

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN

ORIGINAL

BAUM RESEARCH AND DEVELOPMENT
CO., INC., et al.

Volume - 9, 10, 13, 14 - 24, 25, 31 - 44

Plaintiffs,

Case No. 98-72946

v.

Hon. Avern Cohn

HILLERICH & BRADSBY CO., INC., et al.,

FILED

MAR 11 2005

Defendants.

CLERK'S OFFICE, DETROIT-PSG
U.S. DISTRICT COURT

**VOLUME I - APPENDIX OF CITATIONS TO THE RECORD FOR DEFENDANTS'
MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT AS
A MATTER OF LAW**

David L. Nelson (P18821)
SOMMERS, SCHWARTZ, SILVER &
SCHWARTZ, P.C.
2000 Town Center, Suite 900
Southfield, MI 48075-1100

Salvatore A. Romano
PORTER WRIGHT MORRIS & ARTHUR
1919 Pennsylvania Avenue, N.W.
Suite 500
Washington, D. C. 20006-3434

Jonathan Howe
John M. Peterson
HOWE & HUTTON, LTD.
20 North Wacker Drive, Suite 4200
Chicago, IL 60606-9833

Gregory L. Curtner (P12414)
David R. Grand (P57492)
MILLER, CANFIELD, PADDOCK & STONE,
PLLC
101 N. Main Street, 7th Floor
Ann Arbor, MI 48104

David A. Ettinger (P26537)
HONIGMAN, MILLER, SCHWARTZ AND COHN LLP
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

Frank Northam
WEBSTER, CHAMBERLAIN & BEAN
1747 Pennsylvania Avenue, Ste 1000
Washington, D.C. 20006

Allen M. Krass, Esq.
GIFFORD, KRASS, GROH, SPRINKLE,
ANDERSON & CIKOWSKI, P.C.
280 N. Old Woodward, Suite 400
Birmingham, MI 48009

11

9

William E. Thurston - Cross
Thur./12-16-04

165

Vol. 9

1 A. In this letter, I don't believe so.

2 Q. And from what I can tell from your studies of the Cape
3 Cod League, one of the points was to show that aluminum bats
4 outperformed wood bats; correct?

5 A. Right.

6 Q. And that's exactly what Mr. Archer told the committee
7 in 1992; correct?

8 A. That's correct.

9 Q. And isn't it true that as early as 1986, H&B provided
10 information to the NCAA regarding aluminum bat performance?

11 A. They could very well have.

12 Q. Could you turn to Defense Exhibit 16.1 please.

13 Mr. Thurston, you've seen this letter from H&B to
14 the NCAA in 1986, before haven't you?

15 A. Yes.

16 Q. In fact, that's your handwriting on it, isn't it?

17 A. Correct.

18 Q. And this letter talks about a number of issues relating
19 to aluminum bats, doesn't it?

20 A. Correct.

21 Q. This letter doesn't contain a single bit of
22 misinformation, does it?

23 A. At this time, no.

24 Q. And you truly wouldn't expect bat manufacturers to give
25 the NCAA all of their proprietary internal test data,

98-72946; Baum, et al. v. H&B, et al.

William E. Thurston - Cross
Thur./12-16-04

166

1 because even you knew that manufacturers couldn't be
2 confident that it would stay away from their competitors;
3 isn't that correct?

4 A. I'd agree.

5 Q. Now, Mr. Thurston, you also testified that the NCAA
6 Rules Committee had recommended that the bat manufacturers
7 submit new models. Remember we talked about that earlier,
8 submit those new models to the committee? And we talked
9 about how Mr. Baum didn't submit his high performance
10 composite model to the committee? You recall that
11 testimony?

12 A. I didn't say he didn't, I said I did not receive one.

13 Q. Okay. But on March the 4th, 1997, didn't you write a
14 memo to Jack MacKay acknowledging that H&B Louisville
15 Slugger had submitted its new models to you before they were
16 offered?

17 A. Jack did.

18 Q. Could you turn to Defense Exhibit 170 please. Do you
19 recognize this memo from you to Jack MacKay dated March 4,
20 1997?

21 A. Yes.

22 Q. And you see it's about the two new H&B aluminum models
23 that Mr. MacKay had sent to you so that your players at
24 Amherst College could test them out?

25 A. Yes.

98-72946; Baum, et al. v. H&B, et al.

10

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BAUM RESEARCH AND DEVELOPMENT
CO., INC., ETC., ET AL.,

Plaintiffs,

HONORABLE AVERN COHN

v.

No. 98-72946

HILLERICH & BRADSBY CO., INC.,
ETC., AT AL.,

Defendants.

JURY TRIAL - VOLUME 10

Friday, December 17, 2004

- - -

Appearances (Continued on next page):

Sommers, Schwartz
2000 Town Center, #900
Southfield, Michigan 48075
(248) 355-0300
On behalf of Plaintiffs
David L. Nelson
Andrew J. Kochanowski
David J. Szymanski

Honigman Miller
2290 First National Building
Detroit, Michigan 48226
(313) 465-7368
On behalf of Easton Sports
David A. Ettinger

- - -

To Obtain Certified Transcript, Contact:
Sheri K. Ward, Official Court Reporter
Theodore Levin United States Courthouse
231 West Lafayette Boulevard, Room 219
Detroit, Michigan 48226
(313) 965-4401

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

William E. Thurston - Cross
Fri./12-17-04/Vol. 10

17

1 Q. Would you look at the third paragraph of this memo,
2 please. It says.

3 "It is my understanding that any new
4 alloy or technology must be submitted to
5 NCAA prior to use in NCAA play. All of
6 our Air Attack line was BPF tested by
7 Dr. Brandt and submitted to you for
8 personal testing before being used in
9 NCAA play. You have received the Brandt
10 test and the bats some time ago."

11 So this letter confirms that Louisville Slugger in
12 this instance complied with the rules committee request to
13 submit new products, doesn't it?

14 A. That's correct.

15 Q. Thank you. That's all I have with that one.

16 Now, Mr. Thurston, I would like to spend a few
17 minutes talking to you about your opinions and actions
18 regarding the safety of aluminum bats. Now, am I right in
19 recalling that you told the jury last Friday that there
20 wasn't a safety issue with aluminum bats until '96, '97,
21 '98, '99?

22 A. That's when we really became concerned about safety.
23 There was talk about safety and a little bit of concern
24 before that, but starting in '96 through the present time,
25 yeah, it's been a major issue, that the aluminum bat

98-72946; Baum, et al. v. H&B, et al.

William E. Thurston - Cross
Fri./12-17-04/Vol. 10

21

1 Louisville, Easton, and The Baum Company?

2 A. Correct.

3 Q. And in fact isn't it the case that you have always had
4 the ability to buy any bat you want from any manufacturer
5 you choose, including The Baum Company?

6 A. I buy bats the players want. We have -- ask the
7 players what they want for a bat, what size, what length,
8 which model, and we buy now about 14 bats a year because
9 they are not durable, they break, and so we have had to buy
10 more bats.

11 Q. So you would agree that there is not one NCAA rule that
12 prevents any of your players or you from using the Baum bat
13 in official NCAA contests?

14 A. Is there a rule that prevents it?

15 Q. Yes.

16 A. I don't believe so.

17 Q. And that's been the case, hasn't it, Mr. Thurston,
18 since the Baseball Rules Committee approved the use of the
19 Baum company's bats way back in January of 1992?

20 A. I believe so.

21 Q. And that was, as we discussed, when Steve Baum had
22 provided you with Professor Collier's study that
23 demonstrated his high-performance bats exceeded aluminum by
24 10 percent?

25 A. I never used the high-performance bat. Never bought

98-72946; Baum, et al. v. H&B, et al.

William E. Thurston - Cross
Fri./12-17-04/Vol. 10

56

1 this before, but does it appear to you today that these are
2 the notes that Mr. Breidenthal made of Mr. Baum's
3 presentation to the committee?

4 A. Yes.

5 Q. Okay.

6 A. I can't read them because they are so blanked out here.
7 You couldn't read them either.

8 THE COURT: Just there's no question.

9 THE WITNESS: Well, how am I supposed to talk
10 about something --

11 THE COURT: Sir, there is no question pending.
12 You haven't been asked a question. We go question by
13 question.

14 BY MR. WIERENGA:

15 Q. I have actually got just one question for you, sir, but
16 I want to make sure we are on the same page of the document.
17 So if you are on Page 3 now where we first see Steve Baum,
18 if you could turn to the next page, Page 4, it appears that
19 the notes of Mr. Baum's comments continue, and if you could
20 turn another page to Page 5, it appears that the
21 first paragraph reflects comments by Steve Baum and then
22 there is a Sub C, Louisville Slugger, and it appears that
23 you began, Mr. Breidenthal began taking notes on the
24 presentation of Louisville Slugger, correct?

25 A. Correct.

98-72946; Baum, et al. v. H&B, et al.

William E. Thurston - Cross
Fri./12-17-04/Vol. 10

57

1 Q. I just want to ask you one question about the paragraph
2 at the top of Page 5.

3 MR. WIERENGA: And could we highlight that, Joe?

4 BY MR. WIERENGA:

5 Q. I think I can read Mr. Breidenthal's writing. You tell
6 me if you disagree with what I think it says.

7 Mr. Breidenthal wrote, "Implement for the 1997 season the
8 following rule "No bat may exceed any value over 10 percent
9 of wood given equal length, weight and sweet spot diameter."

10 MR. SZYMANSKI: Your Honor, I'm sorry, I have to
11 object. This is complete hearsay. He says he does not
12 recognize the document.

13 THE COURT: The question is is that what that
14 says. He's identified this -- the exhibit is in evidence,
15 Mr. Szymanski.

16 MR. SZYMANSKI: Thank you, Your Honor.

17 THE COURT: The objection is overruled. Repeat
18 your question.

19 BY MR. WIERENGA:

20 Q. My only question is would you agree, sir, that that's
21 what it says there?

22 A. Yes.

23 Q. Thank you. And so it appears that Mr. Breidenthal at
24 the meeting wrote down that Steve Baum said to the committee
25 that they should adopt in 1997 a rule that no bat may exceed

98-72946; Baum, et al. v. H&B, et al.

William E. Thurston - Cross
Fri./12-17-04/Vol. 10

58

1 any value over 10 percent of wood given other things being
2 equal?

3 A. This is 1995, right.

4 Q. That's right.

5 A. And we are talking about 1997?

6 THE COURT: Read the top. Listen to the question
7 carefully.

8 BY MR. WIERENGA:

9 Q. It appears that in 1995 Mr. Baum proposed a 1997 rule,
10 a rule to be used in 1997 in which no bat may exceed any
11 value over 10 percent of wood. That's what the minutes
12 reflect, correct?

13 A. Okay.

14 Q. That's all I have on that document, sir.

15 Now, you also testified earlier in your testimony
16 about an occasion on which the NCAA Executive Committee
17 declined to approve funding of \$25,000, I believe it was,
18 for bat-related testing, correct? That was your testimony?

19 A. Correct.

20 Q. Isn't it also true, sir, on another occasion, I believe
21 a year later, that the Executive Committee in fact approved
22 \$50,000 for bat-related testing?

23 A. I'm not sure if it was one year later. It was when
24 Crisco came on about 1997, and they finally approved it,
25 which was appreciated. I have no problem with what the NCAA

98-72946; Baum, et al. v. H&B, et al.

William E. Thurston - Cross
Fri./12-17-04/Vol. 10

59

1 did up to this time. We are all on the same page. We are
2 all trying to do the same thing.

3 Q. Thank you, sir. I now want to ask just a couple of
4 questions about what happened in 1998 and the 1998 rule
5 making that we have discussed several times now, and to make
6 sure I have the chronology correct, by late July, early
7 August 1998 the Baseball Rules Committee had recommended or
8 was preparing to recommend the three-prong test with the
9 third prong being that bats could not exceed 93 miles per
10 hour when tested on the Baum?

11 A. In the lab, right.

12 Q. Now, at the time of that recommendation it's true,
13 isn't it, that there was only Baum Hitting Machine in the
14 world?

15 A. That's correct.

16 Q. And that was located at Mr. Baum's location in Traverse
17 City, Michigan?

18 A. Right.

19 Q. And if you could turn to PX245 and we have skipped an
20 exhibit in between there. This is an August 5th, 1998 memo
21 from Bill Rowe, chair of the rules committee, to the
22 Division I, II and III championship bodies, correct?

23 A. That's right.

24 Q. And in this document Mr. Rowe is reporting the rules
25 committee's recommendation regarding the three-prong rule to

98-72946; Baum, et al. v. H&B, et al.

William E. Thurston - Cross
Fri./12-17-04/Vol. 10

60

1 these championship bodies, correct?

2 A. That's correct.

3 Q. If you could look at the second-to-the-last paragraph?

4 MR. WIERENGA: Joe, could you highlight that,
5 please?

6 THE COURT: On which page?

7 MR. WIERENGA: On the first page, excuse me.

8 BY MR. WIERENGA:

9 Q. That paragraph reads, "To meet the batted ball speed --

10 THE COURT: Slower and louder.

11 MR. WIERENGA: Thank you.

12 "To meet the batted ball speeds,
13 manufacturers will be required to submit
14 their bats for certification to an
15 independent testing group to measure the
16 batted ball exit velocity of a moving
17 ball that is hit by a moving bat. The
18 independent testing group also will
19 conduct compliance tests for the NCAA on
20 each bat model purchased at random."

21 BY MR. WIERENGA:

22 Q. Now, at the time this document was created there was no
23 independent testing group that had a Baum Hitting Machine,
24 correct?

25 A. On August 5th, no.

98-72946; Baum, et al. v. H&B, et al.

William E. Thurston - Cross
Fri./12-17-04/Vol. 10

61

1 Q. That's correct. And it wasn't until sometime later
2 that an independent test tester received a Baum Hitting
3 Machine, correct.

4 A. Correct.

5 Q. If you could turn to the next exhibit, which is PX411,
6 this is an August 12th, 1998 press release announcing that
7 the NCAA Executive Committee had approved the rules
8 committee's recommendation for the three-prong test with the
9 third prong at 93 plus or minus 1 mile per hour, correct?

10 A. That's correct.

11 Q. But the Executive Committee delayed the implementation
12 date to August 1999, correct?

13 A. Yeah --

14 Q. At this time?

15 A. From January to August, yes.

16 Q. That's correct.

17 A. Okay.

18 Q. If you could look at the third paragraph on the
19 first page --

20 MR. WIERENGA: Could you highlight that, Joe?

21 BY MR. WIERENGA:

22 Q. It reads:

23 "The rules committee had also
24 recommended that the changes become
25 effective January 1999. However, the

98-72946; Baum, et al. v. H&B, et al.

William E. Thurston - Cross
Fri./12-17-04/Vol. 10

62

1 Executive Committee delayed the date to
2 assure that proper testing would take
3 place and that bats would be available,
4 and that was the reason that the
5 executive committee gave at the time for
6 delaying implementation."

7 Correct?

8 A. That's correct.

9 Q. And if you could read the last paragraph on this page,
10 which is a poor copy, and I apologize for that, but I think
11 I can read what it says and tell me if you disagree. It
12 says, however -- the executive committee is saying:

13 "However, it is also important that we
14 have independent verifiable testing to
15 assure that we have appropriate bats for
16 collegiate competition, and we need more
17 time to do that than January 1999 as an
18 implementation date gives us."

19 Correct?

20 A. Correct.

21 Q. That was the reason that the executive gave for
22 delaying the implementation of the three-prong rule?

23 A. I have no problem with that.

24 Q. Now, I apologize, I have an exhibit that's not in your
25 book. It came up just a few minutes ago.

98-72946; Baum, et al. v. H&B, et al.

William E. Thurston - Cross
Fri./12-17-04/Vol. 10

63

1 MR. WIERENGA: I have copies here, Your Honor.
2 May I approach?
3 THE COURT: Go ahead. What exhibit number?
4 MR. WIERENGA: It's NX65.
5 THE COURT: Does anybody have it?
6 MR. WIERENGA: I have got copies for everyone,
7 Your Honor.
8 THE COURT: All right. PX?
9 MR. WIERENGA: No, NX, Your Honor.
10 THE COURT: How about the jury? Does the jury
11 have it?
12 MR. WIERENGA: They do not. I'm happy to give it
13 to them, if I may approach, Your Honor.
14 THE COURT: Yeah.
15 Are you done with your distribution?
16 MR. WIERENGA: Yes, Your Honor.
17 THE COURT: I will take judicial notice of the
18 fact that everybody in the courtroom has a copy but the
19 judge.
20 MR. WIERENGA: We don't want that, Your Honor.
21 THE COURT: Thank you.
22 NX?
23 MR. WIERENGA: NX65, Your Honor.
24 THE COURT: Okay.
25

98-72946; Baum, et al. v. H&B, et al.

William E. Thurston - Redirect
Fri./12-17-04/Vol. 10

103

1 played 35 games, you may win 3 or 4. It would be an unlevel
2 playing field, okay, because the aluminum bats outperform so
3 much.

4 Also, I wanted to point out, and they tried to
5 make it look like I wasn't concerned about pitchers --

6 Q. Just go ahead. Why do you use the bats?

7 A. We use the bat to compete, okay? And if I did use wood
8 or composite against our opponents, yes, we would be
9 protecting opponent's pitchers. Their team using aluminum
10 would not be protecting our pitcher, okay? And I was
11 questioned in a deposition, well, that shows you are not
12 interested in protected the pitcher. Do you think I'd be
13 here for seven or eight days, do you think I have done all
14 of this work because I am worried about them not protecting
15 players? The reason I'm here is to testify on what I know
16 about the situation, and it's all based on safety. I don't
17 care about home runs, and I do care about the reliability of
18 the game and the integrity of the game and stuff, but the
19 main thing, when I receive a phone call from a mother and
20 dad about a pitcher who has been hurt badly, I really feel
21 bad, I didn't get the job done I should have.

22 Q. You were asked about the Baum bat in competition? Why
23 not use the Baum bat in competition at Amherst?

24 A. Well, if the other team is using aluminum, I'm not
25 going to be able to compete, the same thing I just said.

98-72946; Baum, et al. v. H&B, et al.

13

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BAUM RESEARCH AND DEVELOPMENT
CO., INC., ETC., ET AL.,

Plaintiffs,

HONORABLE AVERN COHN

v.

No. 98-72946

HILLERICH & BRADSBY CO., INC.,
ETC., AT AL.,

Defendants.

JURY TRIAL - VOLUME 13

Wednesday, January 5, 2005

Appearances (Continued on next page):

Sommers, Schwartz
2000 Town Center, #900
Southfield, Michigan 48075
(248) 355-0300
On behalf of Plaintiffs
David L. Nelson
Andrew J. Kochanowski

Honigman Miller
2290 First National Building
Detroit, Michigan 48226
(313) 465-7368
On behalf of Easton Sports
David A. Ettinger

To Obtain Certified Transcript, Contact:
Sheri K. Ward, Official Court Reporter
Theodore Levin United States Courthouse
231 West Lafayette Boulevard, Room 219
Detroit, Michigan 48226
(313) 965-4401

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

Todd Petr - Direct
Wed./1-5-05/Vol. 13

34

1 Q. Fair enough. Dr. Sherwood was the sole person used by
2 the NCAA to create the data, the wood bat database on which
3 the formula could be used?

4 A. That's correct.

5 Q. And so in doing so he took 10 bats, 10 wooden bats,
6 correct?

7 A. I believe that's right, yes.

8 Q. And those 10 wooden bats were all of equal length?

9 A. Yes.

10 Q. And they were all of equal weight?

11 A. Yes.

12 Q. And he tested them sometime in August or early
13 September of 1999?

14 A. Yes.

15 Q. That's correct?

16 A. That's right, yeah.

17 Q. And just so that we understand very clearly what
18 Dr. Sherwood got from those 10 bats were results of the bats
19 hitting between 93.84 miles an hour and 96.042 miles an
20 hour?

21 A. That sounds correct.

22 Q. That sounds correct. And the NCAA had that data in its
23 possession in August or September of 1999, right?

24 A. We got it in early or mid September, yes.

25 Q. All right. And you had an opportunity to decide how to

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Direct
Wed./1-5-05/Vol. 13

35

- 1 treat that data; is that correct?
- 2 A. Not me.
- 3 Q. The NCAA?
- 4 A. We took it to our research panel, talked to them about
- 5 it. At that point that was the group we took it to.
- 6 Q. Okay. So you say you took the results of the 10 bats
- 7 and you turned it over to Dr. Johnson, Dr. Carroll?
- 8 A. The whole panel.
- 9 Q. The whole panel. Is it five people?
- 10 A. I think it's seven.
- 11 Q. Seven. And you said now, panel, you tell us how to
- 12 treat this data? Should we average these results, should we
- 13 throw out the high-low and maybe take a median, or should we
- 14 take the highest results?
- 15 A. I believe they stated what they wanted in that June
- 16 report.
- 17 Q. I want your testimony, sir. Is it your testimony that
- 18 you took that data and you gave it to the seven people and
- 19 then you waited to have them tell you, those seven people,
- 20 tell you how to treat that data? And, again, whether to
- 21 average it, whether to maybe throw out the lowest and the
- 22 highest score and take some median or average of what
- 23 remains or to pick the highest average?
- 24 A. Yeah, that was a decision that was made by the panel.
- 25 I think it was made earlier than that, but it was a decision

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Direct
Wed./1-5-05/Vol. 13

36

1 made by the panel.

2 Q. So that's your testimony then, that those seven people
3 made that decision, correct?

4 A. Yes.

5 Q. And Dr. Sherwood wouldn't be involved in making that
6 decision, correct?

7 A. Dr. Sherwood advised the panel on the data, but no, he
8 was not a member of the panel, he could not vote on any
9 decision-making process, or anything like that.

10 Q. So Dr. Sherwood had no input on whether or not to adopt
11 ultimately a BESR that equated to a 97-mile-an-hour
12 standard; is that your testimony?

13 A. Dr. Sherwood was advisory, and certainly we were in
14 contact with him and he spoke with members of the panel in
15 conference calls and that sort of thing. I'm not sure what
16 you are getting at, but he was involved in the process
17 through the whole thing, but he had no vote. He had no --
18 he did not have the opportunity to make the final decision.

19 Q. Okay. So it was the baseball research panel that made
20 the final decision to increase the BESR to .728?

21 A. Yes.

22 Q. And as we saw from the, from the data, from the
23 documents yesterday, it appears that that decision was made
24 sometime between September 21 and September 23; is that
25 correct?

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Direct
Wed./1-5-05/Vol. 13

37

- 1 A. That's correct.
- 2 Q. All right. Because on September 23 the NCAA Executive
3 Committee voted to have the BESR be .728, equating to
4 97 miles an hour?
- 5 A. That's my recollection, yes.
- 6 Q. Okay. So -- let me back up -- there are no documents,
7 are there, documenting any contact between the blue ribbon
8 panel and Dr. Sherwood or the NCAA that would indicate that
9 that decision came from them; is that correct?
- 10 A. This was all handled by conference call. There are no
11 documents.
- 12 Q. You would agree that the decision to change the BESR
13 from .721 to .728 resulted in essentially adding another
14 mile to that top speed, that 96.042 top speed, correct?
- 15 A. Yeah, that would be the translation of the BESR, would
16 be about 1 mile an hour, yes.
- 17 Q. So it's your testimony then that the blue ribbon panel
18 told the NCAA to use that 96-mile-an-hour top speed, and it
19 was the blue ribbon panel that then added an extra mile to
20 it to arrive at that final BESR, correct?
- 21 A. Yeah, 96 plus 1.
- 22 Q. And all of those decisions were made independent of the
23 settlement of the Easton lawsuit, which happened at about
24 the same time, correct?
- 25 A. The panel was not involved in settlement of the

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Direct
Wed./1-5-05/Vol. 13

38

1 lawsuit.

2 Q. And Dr. Sherwood was not involved in the settlement of
3 the lawsuit; is that correct?

4 A. Not to my knowledge.

5 Q. And you were in touch with Dr. Sherwood during this
6 period of time in mid to late September, were you not?

7 A. Oh, yes.

8 Q. So it would have been improper -- well, back up.

9 Dr. Sherwood then wouldn't have been involved in
10 any writings or rewritings concerning any protocols that
11 were being discussed during this late period of time,
12 correct?

13 MR. CURTNER: Your Honor, I object. We're going
14 into the subject area that I thought the Court said we were
15 not going to cover.

16 THE COURT: You will have to remind me. No, no,
17 no. I haven't said anything about not examining the witness
18 on anything. If you want a side bar, I will explain that to
19 you.

20 MR. CURTNER: I understand your ruling,
21 Your Honor, but I --

22 THE COURT: Go ahead.

23 MR. CURTNER: I thought we weren't going to cover
24 all of this today.

25 THE COURT: No. Would you like a side bar?

98-72946; Baum, et al. v. H&B, et al.

14

1.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BAUM RESEARCH AND DEVELOPMENT
CO., INC., ETC., ET AL.,

Plaintiffs,
HONORABLE AVERN COHN
v.

No. 98-72946

HILLERICH & BRADSBY CO., INC.,
ETC., AT AL.,

Defendants.

JURY TRIAL - VOLUME 14

Thursday, January 6, 2005

Appearances (Continued on next page):

Sommers, Schwartz
2000 Town Center, #900
Southfield, Michigan 48075
(248) 355-0300

On behalf of Plaintiffs
David L. Nelson
Patrick B. McCauley
Andrew J. Kochanowski

Honigman Miller
2290 First National Building
Detroit, Michigan 48226
(313) 465-7368

On behalf of Easton Sports
David A. Ettinger

To Obtain Certified Transcript, Contact:
Sheri K. Ward, Official Court Reporter
Theodore Levin United States Courthouse
231 West Lafayette Boulevard, Room 219
Detroit, Michigan 48226
(313) 965-4401

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

71

1 shows that it peaked at .306 in 1998 and has declined by
2 2004 to .291, which is pretty much back where it was in 1979
3 and 1980. Do you see that?

4 A. Yes, I do.

5 Q. And this is based on NCAA statistics. Can you, sir,
6 tell me whether the NCAA and the panel and the people that
7 you deal with are satisfied with where the performance of
8 the game is today?

9 A. I know that the baseball coaches and the Baseball Rules
10 Committee are very satisfied that the game is what they
11 would call back in line, that is, the offense and defense
12 are much more balanced than they were say in 1998. The
13 panel is pleased with where the game sits, and they rely
14 heavily for those impressions on the baseball people.

15 Q. Now I'm going to ask you a research question. The
16 decline in the batting average from 1998 through the
17 present, can you as a researcher, as a person who deals in
18 science, draw any conclusions as to what caused that? Did
19 the change in the rule cause the decline in the batting
20 average?

21 A. It's always difficult to assert causality on a system
22 that's as large as the sport of baseball. I would say that
23 the circumstantial evidence here points pretty strongly to
24 changes in the bat and probably the ball to a certain
25 extent, that they probably had a significant effect on what

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

72

1 we are seeing on the field, and I know that baseball coaches
2 and baseball folks who we deal with believe that that is,
3 that it is the rule changes in the bats that really make
4 that difference.

5 Q. Let me back up a little bit and start sort of the at
6 the beginning. Would you describe what the NCAA is and what
7 it does?

8 A. The NCAA is a membership organization. We are made up
9 of colleges and universities, right now of over 1,000
10 colleges and universities. We are the administrator of the
11 college athletics programs for the nation -- or for our
12 membership group. We are -- as a membership group,
13 decisions are made by representatives from the membership.
14 That's why we have all of these committees out there that
15 you hear about. All of them are populated by presidents or
16 faculty or athletics administrators or coaches or whoever it
17 may be from the member institutions.

18 So my job as an administrator in the NCAA national
19 office is to work for the membership and to see that their
20 needs are being met, that their issues are being addressed,
21 and we like to say what we do in the office is serve the
22 membership. That's sort of our mantra.

23 MR. CURTNER: Can you put up NX85. It should be
24 the next one in your books.

25

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

73

1 BY MR. CURTNER:

2 Q. This is a, at least a portion of the NCAA Governance
3 Organizational Chart; is that correct?

4 A. Yes.

5 Q. Would you just quickly describe how all of this fits
6 together as it relates to baseball?

7 A. Well, as you can see, if you start at the bottom, the
8 Baseball Rules Committee sort of is the first cut. We look
9 at baseball rules. There is also championships committees
10 that run championships. That's a separate piece, but we're
11 talking about the rules of baseball.

12 The Baseball Rules Committee really is the
13 group that would get into the detail and make
14 recommendations that might move up this chain. You see
15 reference here to a Division I baseball committee,
16 Division II, Division III. We have three distinct divisions
17 within our association, and we talked a little bit about
18 this a couple days ago, but there is three divisions.

19 The Baseball Rules Committee has representation
20 from all three divisions, which is why you see it cut across
21 the whole bottom. As the recommendation moves through, they
22 are other steps through the bureaucratic process that it
23 goes to. As far as rules are concerned, sport rules are
24 concerned, the ultimate, if the divisions have a difference
25 of opinion, the ultimate arbiter of those differences is the

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

74

1 Executive Committee, as you can see there at the top, and
2 again, that's a group of university presidents.

3 Q. So if, as happened here, Division I reaches
4 one conclusion about a baseball rule and II a different, III
5 a different, what happens?

6 A. That then would go to the Executive Committee, and the
7 Executive Committee then has the responsibility of aligning
8 the three division's sport rules. It's important to the
9 NCAA that the rules on the field are consistent across all
10 three divisions. So it goes to the Executive Committee,
11 which has representatives from all three of those divisions,
and they work through that.

13 Q. Why is it important that the playing rules be the same
14 for all three divisions?

15 A. We want to, first of all, ensure that the college game
16 is the college game, and the division is sort of an
17 artificial administrative and financial distinguisher of
18 universities. Some are philosophical, some are financial.

19 But we want the college game to be the college
20 game in whatever game we are talking about, football,
21 basketball, or baseball. Kids can leave one school and go
22 to another in another division. Coaches can leave one
23 school and go to another in another division. Referees and
24 umpires call games in all three divisions sometimes.

25 So it just, it streamlines the process. We don't

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

75

1 want somebody having to go from Division III to Division II
2 and try to remember this rule is appropriate for them and
3 not for us. So it's important that we keep it the college
4 game is the college game.

5 Q. Now, where does the staff fit into this membership
6 structure?

7 A. The staff, as I said, serves the membership. So there
8 would be staff that assists each of the groups here and the
9 other 200 or so committees that formulate the administrative
10 decision-making process within the association. So staff
11 simply works as administrators for the committees making
12 sure that they have -- that their meetings are scheduled,
13 that they have appropriate materials, that they have the
14 information that they need. That the communication, we
15 would handle communication between committees at a staff
16 level, for instance, to make sure that if a recommendation
17 moves forward it does so in a proper way. So we are just
18 sort of floating around the edges here assisting with the
19 membership so that they can make appropriate rules and
20 policies.

21 Q. Does the staff set the rules?

22 A. Not at all.

23 Q. Do you have the power to make rules for the NCAA
24 members?

25 A. Would that I could, but no, I do not.

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

76

1 Q. Does the president of the NCAA have that authority?

2 A. He has no power to make a rule, no.

3 Q. So who does have the power to make the rules?

4 A. The membership does. In a specified way through a
5 specified committee structure the membership has total
6 control on how rules are set and how they are changed.

7 Q. How often do these various committees and boards of
8 directors meet?

9 A. Boards of Directors, Executive Committee meet
10 quarterly. The committees sort of lower down in the
11 structure, it depends on the committee's needs. Anywhere
12 from once a year to -- some of the committees that would
13 have, like the baseball research panel in 1999, might meet
14 several times in the span of a couple or three months if
15 there is a significant issue that they are trying to work
16 through.

17 Q. Now, do the people at the staff, are they the higher
18 ups who can overrule committees?

19 A. Staff cannot overrule a committee, no.

20 Q. Do you consider yourself to be one of those higher-ups
21 or a power that be?

22 A. I'm not a power that be, no.

23 Q. Now, where would a special committee or group like the
24 baseball research panel fit into this governance structure?

25 A. Those types of groups, we call that group advisory to

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

77

1 other groups. In the case of the baseball research panel,
2 when it first became formed, as I say, the issue of baseball
3 bat standards rested at that time with the Executive
4 Committee. So at that time they were sort of advisory to
5 both the Baseball Rules Committee and the Executive
6 Committee.

7 Since that initial decision was made by the
8 Executive Committee about the BESR standard and all of that
9 in '99, the baseball research panel would be serving as an
10 advisory capacity directly to the Baseball Rules Committee.

11 Q. So if somebody wanted to change a rule relating to
12 baseball bats or the game of baseball in general, how would
13 they do that? How would they go through that process?

14 A. They would make a recommendation to the Baseball Rules
15 Committee, and in this process the Baseball Rules Committee
16 then I think, if it was technical in nature, if it required
17 scientific testing or data to be brought to bear, they would
18 ask the research panel to gather and provide some advice or
19 recommendation or whatever it may be, but the ultimate
20 decision on whether to move that forward in the process
21 would be that of the Baseball Rules Committee.

22 Q. And then where would its recommendation go? What would
23 become of it if it was a change?

24 A. If, if the divisional groups approved it and it went on
25 up through the process, it ends up being a rule in the, in

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

102

1 couldn't find it. The .4 didn't seem to exist. There was
2 .325 a lot of places, some had ranges, but .4 was a
3 struggle.

4 The other thing we learned -- and we had an expert
5 in. James Ashton-Miller is an expert in human biomechanics
6 and it was his impression as well as Trey Crisco --

7 MR. KOCHANOWSKI: Your Honor, objection. At this
8 point I will interrupt. If the witness is going to testify
9 about his personal knowledge or his research, it's perfectly
10 proper, but he's talking about somebody else's knowledge.

11 THE COURT: I know.

12 MR. KOCHANOWSKI: And that's hearsay.

13 THE COURT: You've got to rephrase the question,
14 and I take it this is not offered for truth but information
15 that was made available to either the panel or the
16 committee, and in that context I suppose we can -- it's
17 admissible, not offered for the truth.

18 MR. CURTNER: It's part of the legislative
19 process.

20 THE COURT: As part of the rule making process.

21 MR. KOCHANOWSKI: Very well, your Honor.

22 THE COURT: Thank you. Now, rephrase your
23 question.

24 BY MR. CURTNER:

25 Q. The question is: What did you learn, sir, about this

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

103

1 reaction time issue --

2 THE COURT: No, what were you told. There's a
3 difference between learning something and being told
4 something. If you learn something as opposed to -- just
5 rephrase your question.

6 BY MR. CURTNER:

7 Q. What information came to your --

8 THE COURT: No, first, where did he get it from,
9 when did he get it, who did he get it from and what did it
10 consist of.

11 MR. CURTNER: I think that's what he was trying to
12 say, your Honor.

13 THE COURT: Well, I know what he was trying to say
14 but I suggested how you should proceed with it. You want to
15 get the evidence in?

16 MR. CURTNER: I do.

17 THE COURT: Do it my way.

18 BY MR. CURTNER:

19 Q. What did you learn and from what source did you, you
20 know, who told you this and what sources did you have?

21 A. There was, as I said, deliberation among members of the
22 panel. We leaned a lot in this area to Dr. Ashton-Miller
23 who this was really his area of specialty and one the
24 reasons -- one of the main reasons he had been chosen for
25 the panel. And he came to a similar conclusion, as did Trey

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

104

1 Crisco and I think perhaps others when looking at this, that
2 the reaction time, the pitch -- the active reacting in --
3 after full motion of pitching and everything that's going on
4 is very, very difficult to come to any number to try to
5 quantify that; that it, the range over pitch to pitch even
6 or pitcher to pitcher was so great that there really -- it
7 really was difficult, if not impossible, to attempt to truly
8 assess that in any scientific way.

9 Q. And based on that information, did that inform the way
10 the NCAA went about making decisions relating to this issue?

11 A. Absolutely. Reaction time we didn't think we could
12 rely on as a basis for any sort of rule making, because the
13 numbers that we'd be basing it on didn't meet the panel's
14 view of what would be scientifically appropriate.

15 Q. Now, it also says in this paragraph that ball exit
16 velocities from metal bats currently in use have been
17 measured from 103 to 113 miles per hour. Do you see that?

18 A. I do see that.

19 Q. Do you know whether those are good numbers?

20 A. I don't know whether they're good numbers or not.

21 Q. What did you -- did you learn more or later information
22 on this subject?

23 A. Well, I think these numbers were provided to the
24 Baseball Rules Committee by Mr. Baum. I think that they
25 came from his lab.

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

105

1 Q. So these are lab numbers as opposed to field numbers?

2 A. I believe so, yes.

3 Q. Now, is it good science or bad science to take lab
4 numbers and use them to project things that are taking place
5 in the field?

6 A. It's very difficult to do. I don't think you can make
7 a -- you can translate that, because in the lab, what you
8 want to do is set up a condition that can be repeatable and
9 it's standardized so you can compare across equipment;
10 that's what it's there for. But that doesn't by any stretch
11 mean that the field is limited to, say, a 70-mile an hour
12 pitch speed. Obviously pitches go faster than that, or a
13 66-mile an hour swing speed. Mark McGuire and Barry Bonds
14 probably swings a lot faster than that. So the lab test
15 needs to be looked at as just what it is, a test in a
16 laboratory to control for variation, but it won't translate
17 into reality in the field.

18 Q. So in the field, would bats hit the same as they do or
19 balls leave a bat the same -- at the same speeds that they
20 do in the lab?

21 A. No, I don't think -- not normally.

22 Q. Now, this says that ball exit velocities have been
23 measured at these speeds. Do you know whether the ball
24 slows down between the time it leaves the bat and the time
25 it gets to the pitcher?

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

106

1 A. My limited understanding of the physics would say yes,
2 it does in fact slow down, that you have air resistance
3 which works against the ball and gravity, and those two
4 things can slow down. So if it leaves the bat a 100-miles
5 an hour, as it gets further, it's slowing down all the time
6 and eventually falling to the ground.

7 Q. And if you were going to do a reaction time projection
8 or try to base something on an estimate of reaction time,
9 would you have to take that slowing down because of air
10 resistance into account?

11 A. You would, to get -- to get to -- if you wanted to get
12 to the real time it takes for a ball to go X number of feet,
13 you wouldn't actually use the speed as it comes off the bat
14 as the speed. It would have to be the average speed of that
15 ball between whatever -- between point A and point B.
16 That's how you have to calculate that.

17 Q. And in this August letter, Exhibit 258, did the NCAA
18 take into account the fact that the ball slows down after it
19 leaves the bat?

20 A. I don't believe so.

21 Q. Was that an error?

22 A. I think it was, yes.

23 Q. And it says in the conclusion of that paragraph:
24 Therefore, there is a window of time during which a
25 collegiate baseball pitcher could be vulnerable to being

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

107

1 struck by a batted ball. Is that an accurate statement
2 still, sir?

3 A. I don't think based on the evidence presented here it's
4 accurate, no.

5 Q. Is there always some risk of a pitcher getting struck?

6 A. Yes, there is.

7 Q. No matter what kind of bats you use?

8 A. Pretty much.

9 Q. Now, were there some rulings adopted in August of 1998,
10 some rule changes?

11 A. I believe there were, yes.

12 Q. Would you look at PX 94, please. It should be the next
13 one.

14 A. NX, you mean?

15 Q. I'm sorry, NX, yes. This is the three prong bat rule
16 chart. Can you explain what the three prongs were?

17 A. Sure. The first prong of this rule required that bats
18 be made slightly narrower, that the diameter of the bat be
19 narrowed from a maximum of two and three-quarters inches to
20 a maximum of two and five-eighths, so there was an eighth of
21 an inch removed on the maximum diameter a bat could be. And
22 the length to weight differential, minus 5 to minus 3 means
23 that you couldn't have a bat that was any more than three
24 units longer than the number of ounces that it weighed.

25 And what we mean by that is under a minus 5 rule,

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

108

1 a 34-inch bat could weigh as little as 29-ounces, 34 minus
2 the 29 is your minus 5 rule. Under the new rule -- under
3 the second prong of this rule, a 34-inch bat would have to
4 weigh at least 31-ounces, and that has to do with how fast
5 you can swing. The lighter the bat, you can swing it
6 faster. So they wanted to reduce the speed at which the bat
7 could be swung I believe.

8 And then the third prong, which is we -- is to set
9 this exit velocity, what we now refer to as the BESR.

10 Q. So going back to prong two, from minus 5 to minus 3,
11 that's the difference between the length and the weight of
the bat; is that right?

13 A. Exactly, yes.

14 Q. And so before, the difference could be five units and
15 after that rule, the difference could only be three units;
16 is that right?

17 A. Yes.

18 Q. And so that had the effect of making the bat heavier?

19 A. Yes, for the same length bat.

20 Q. And so is a heavier bat slower to swing or faster to
21 swing?

22 A. I assume slower.

23 Q. Why is that?

24 A. Sure would be for me. Because it's heavier.

25 Q. It just takes longer for a human to get it up to speed?

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

109

1 A. It takes longer to bring it around, yeah.

2 Q. Was there discussion within the NCAA about the
3 effective date of these rules or at least the third part of
4 it?

5 A. Yes.

6 Q. And what happened in August of 1998 on that? You might
7 want to look at NX 36, which is the next document.

8 A. They -- at this meeting, the NCAA -- this is minutes
9 from the NCAA executive committee. I believe what they did
10 was to set an implementation date for the ball exit speed of
11 August 1, 1999. They also adopted the first two prongs I
12 believe at this meeting for use in the 1999 season, if I've
13 got the dates right.

14 Q. It says on Page 2 of the exhibit, which is also Page 2
15 of the minutes: Review of baseball rules changes. Do you
16 see that, sir?

17 A. Yes.

18 Q. Item two?

19 A. Yes.

20 Q. The executive committee addressed a change in the rules
21 concerning baseball bats that had been recommended by the
22 Baseball Rules Committee. The executive committee became
23 involved because the three divisions championships bodies
24 had not agreed on the same effective date for the rule
25 change?

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

124

1 Q. And it says that they are part of -- from the division
2 of kinesiology at the University of Minnesota, right?

3 A. Yes.

4 Q. And in their abstract on the next page, what is an
5 abstract in this kind of a study?

6 A. An abstract is a very brief summary of what you're
7 about to read or what the study is about and what it may
8 have found.

9 Q. And it says in that, that it says a review of the
10 research literature on reaction time and movement time
11 limitations, and then it goes on. Does that mean that this
12 is in itself a study or is this again a review of
13 literature?

14 A. It looks to be a review of the literature, not a study
15 data.

16 Q. What's the significance of the difference of between
17 those, from your point of view as a researcher?

18 A. Well, in a study, you're actually collecting data, your
19 own data, analyzing it and setting up the parameters under
20 which the study is to take place. In a review of the
21 literature, you're simply looking at what other people have
22 done in trying to assess that.

23 Q. And they say: A review of the literature on reaction
24 time, coupled with critical assumptions about fielding
25 behavior and environmental cues, indicates that average

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

125

1 college or professional baseball players may be able to
2 begin an accurate response only 125 milliseconds after the
3 ball is contacted and complete the motion of the arm to the
4 ball in at least 200 milliseconds for a total response time
5 of about 325 milliseconds.

6 A. I see that, yes.

7 Q. Now, if you were just reading that, would you conclude
8 that the .4 number on reaction time used in some of these
9 NCAA letters was correct or incorrect?

10 A. Incorrect.

11 Q. They then say: More ecologically valid experiments are
needed to verify these estimates. Do you see that?

12 A. I do.

13 Q. Do you know whether there have been, since that time up
14 to the present time, ecologically valid experiments on
15 reaction time in baseball?

16 A. Not that I'm aware of, no.

17 Q. Did the baseball research panel look into this
18 question?

19 A. Yes, they did.

20 Q. And you mentioned James Ashton-Miller as an expert in
21 biomechanics. Would you tell the jury a little bit about
22 Dr. Ashton-Miller's qualifications?

23 A. Yes, Dr. Ashton-Miller is a professor, I'm not sure in
24 which department, but at the University of Michigan here, so
25

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

126

1 he's local, and has been -- is an expert in biomechanics and
2 how the human body operates and things like reaction times
3 and that's why he was on the panel.

4 Q. Does he make it his life's work to study human reaction
5 time?

6 A. I guess so.

7 Q. What was his view as reported to the panel on whether
8 you could use this number of 325 or 400 or some other number
9 as a basis for setting rules for baseball bats?

10 A. He thought that there was no -- not enough scientific
11 validity in any of these numbers to be able to base rules on
12 them.

13 Q. Let's look a little further into the Minnesota study,
14 the page marked 100656. Do you see that they're talking
15 about how long it takes a pitch to travel to home plate and
16 125-mile per hour line drive reaches the first baseman or
17 third baseman in about .490 milliseconds and the pitcher in
18 front of the mound at about 300 milliseconds. Do you see
19 that?

20 A. I see that.

21 Q. Do you know whether they took air resistance or gravity
22 into account?

23 A. I don't know. It doesn't appear so.

24 Q. The whole study is of interest but I want to get to the
25 conclusion which is on Page 100660. They say -- and this is

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

127

1 Page 9 of their report.

2 Thus an accurate response beginning only 100 to
3 125 milliseconds after the ball is contacted may be a
4 reasonable average for college or professional players to
5 protect themselves from wicked line drives. However, fielders
6 must be able to complete the motion of the arm to the ball.
7 This may be longer than the ten inches used in the study by
8 Williams and MacFarlane which took a mean of about 100
9 milliseconds but certainly should not take longer than 200
10 milliseconds. This then leads to the surprising conclusion
11 that most fielders are likely to be able to get to the ball,
12 if necessary, in less than 400 milliseconds.

13 Here's the 400 number, right?

14 A. Here it is, yes.

15 Q. But if you add up what they're talking about, reaction
16 time of 100 to 125, let's take 125 as the high end, right?

17 A. Yes.

18 Q. Plus movement time of 100 to 200, let's take 200 as the
19 high end, that should give you the total, right?

20 A. Yes.

21 Q. So if you add 200 and 125, what does it come up with?

22 A. 325.

23 Q. So by their own study is the 400 supported?

24 A. No.

25 Q. So is this 400 just a typo?

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

128

1 A. Well, it might be. I guess they say less than, but
2 it's also less than 1,000 I guess.

3 Q. Now, to be fair to them, on the next page they say:
4 Even if two standard deviations are added to the
5 anticipatory RTs and MTs cited above, the total response
6 time still should be well under 400 MS except for pitchers.
7 And then say: Pitchers are the special case in fielding.
8 And they say, going down: Constraints on the pitcher may
9 combine to yield significantly slower response times perhaps
10 even longer than 400 milliseconds. Right?

11 A. Yes.

12 Q. Now, I want to ask you about some of the components of
13 that. What are standard deviations?

14 A. Standard deviations is a statistically-derived estimate
15 of the variability of the data, the variants around, your
16 average, if you will.

17 Q. So they say if you add two standard deviations you
18 might get up to 400; is that right?

19 A. Yes.

20 Q. In real people's language what does that mean?

21 A. In real people's language, essentially what it means is
22 that our estimate of whatever -- of reaction time, when we
23 go out two standard deviations from that particular
24 estimate, we're 95 percent confident that the estimate falls
25 within that range that we're looking at.

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

129

1 So if our estimate is 325 and the standard
2 deviation is 25 let's say, we're 95 percent confident at
3 that point that the real reaction time -- the true reaction
4 time would be 375 or less.

5 Q. So if the average is 325, they're saying you might get
6 up to 400 by adding some standard deviations to it and you
7 would encompass by that point what percentage of the
8 population?

9 A. By adding -- at least 95 percent.

10 Q. And then they say the pitcher might even be longer than
11 400, right?

A. Yes.

13 Q. Now, can you draw any conclusions from this in terms of
14 how to set up a rule for baseball bats?

15 A. There's so many numbers, there's so much variability, I
16 think that's really where the panel came in.

17 Q. Now, would you look a little further at Crisco to page
18 100717, almost to the end?

19 A. Yes.

20 Q. You see, again, he talks about determine reaction time
21 of pitchers?

22 A. Yes, I see that.

23 Q. And he says in the second sentence: Everyone is in
24 agreement that an actual field study contains both too great
25 of a risk and too much inherent variability to yield any

98-72946; Baum, et al. v. H&B, et al.

Todd Petr - Cross
Thurs./1-6-05/Vol. 14

130

1 meaningful results. Do you see that?

2 A. I do.

3 Q. What does too much inherent variability to yield any
4 meaningful results mean to you?

5 A. Generally, it means you can't control the environment
6 enough to really get a real estimate of whatever -- in this
7 case, of the reaction time, again, I think what James
8 Ashton-Miller was saying.

9 Q. Would you look at the next page, please, 100718? He
10 says critique of the above approach. Do you see that?

11 A. Yes.

12 Q. And in the second paragraph under his critique, he
13 says: I believe the reaction study is an intriguing and
14 important study and that the study should be conducted. I
15 do not believe, however, that the results of that study will
16 be useful in accomplishing AIM 1. The reason is this, in
17 order to accomplish AIM 1, a single value for reaction time
18 is needed. There is no doubt that the measured reaction
19 times will be distributed, i.e., there will be a range of
20 reaction times from slow to fast. Given this range, how do
21 you choose single value?

22 Do you see that?

23 A. Yes, I do.

24 Q. I guess I should read on, what does it mean for the
25 measured reaction times to be distributed?

98-72946; Baum, et al. v. H&B, et al.

15

Todd Petr - Cross
Fri./1-7-05/Vol. 15

146

1 requirement. Jay Bhatt seconded the motion. The motion
2 passed 4 to 0.

3 THE COURT: What exhibit?

4 MS. MOORE: This is DX204.1.

5 THE COURT: What page?

6 MS. MOORE: Page 01419, but the numbers are in the
7 top left hand.

8 THE COURT: Oh, yeah.

9 MS. MOORE: They are not in the place where you
10 usually see them.

11 THE COURT: Okay.

12 BY MS. MOORE:

13 Q. So that refreshed your recollection that Mr. Baum
14 actually voted against a CG or MOI requirement in a
15 protocol?

16 A. That seems to be what happened here, yes. I don't
17 think I was in attendance.

18 Q. The final questions about the blue ribbon panel.

19 A. Sure.

20 Q. While you were liaison to the blue ribbon panel, to
21 your knowledge, did the panel take any actions that would
22 benefit H&B over any other baseball bat manufacturer?

23 A. No, they didn't.

24 Q. Are you personally aware of any misrepresentations made
25 by H&B or their personnel in its dealing with the NCAA or

98-72946; Baum, et al. v. H&B, et al.